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SUBJECT: LAND IN CAMBODIA, PART I: POSSESSION AND OWNERSHIP

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SENSITIVE BUT UNCLASSIFIED

THIS IS THE FIRST OF THREE CABLES ON LAND ISSUES IN CAMBODIA.

**¶1. (SBU) SUMMARY.** Cambodia's 2001 Land Law removed temporary possession as a means of acquiring land and introduced regulations by which the Royal Government of Cambodia (RGC) could: 1) systematically register state and private land in a national cadastre; and 2) sporadically register private land at the request of a land owner. Although the law itself is solid, NGO analysts and legal experts question the effectiveness of the systematic registration process, and a lack of capacity and funding has hindered district land offices' abilities to follow the sporadic registration process. As a result, most Cambodians still operate in a system of "soft" land ownership with varying degrees of claims to their properties. Land transfers, even for titled property, tend to occur without legal documentation. The land law mandates that the National Cadastral Administration resolve disputes, but most land dispute cases are still mediated by commune officials or in the courts. As long as land changes hands informally without cadastre registration, the number of land disputes in Cambodia will continue to increase. END SUMMARY.

THE 2001 LAND LAW AND STATE VERSUS PRIVATE LAND

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**¶2. (U)** Cambodia's comprehensive 2001 Land Law introduced a new set of regulations governing the ownership and transfer of property. A major change to the status quo was the removal of temporary possession as a means of acquiring land. Land title applicants can only claim ownership of land through temporary possession if they can demonstrate more than five continuous years of legal possession, and prove their legal possession began before the passage of the 2001 law. In theory, if not in practice, an individual can no longer acquire land by identifying an unoccupied land parcel and taking possession of it.

**¶3. (U)** The land law also further defined categories of land, including how land in each of those categories can be acquired and used. The categories include: 1) state public property (areas of natural origin such as lakes or islands, general or public use, conservation areas, historical or cultural patrimonies, or royal properties); 2) state private property (any property belonging to the state that does not fall under the definition for state public property); 3) private property (non-government, non-collective domain); and, 4) collective properties (pagoda or indigenous community properties). State-owned land (both state public and state private) accounts for approximately 75-80% of Cambodia's total land area.

SYSTEMATIC LAND REGISTRATION AND THE LMAP PROJECT

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**¶4. (U)** The land law assigns responsibility for classifying, mapping, and registering all land parcels in the country to the National Cadastral Administration (NCA), which falls under the Ministry of

Land Management, Urban Planning and Construction (MLUPC). A land owner cannot hold a legal title to a land parcel unless the NCA has demarcated and recorded it in the Land Register. In 2002, the MLUPC launched a Land Management and Administration Project (LMAP) with support from the World Bank and the Canadian, German and Finnish governments. LMAP seeks to systematically map, register, and issue titles for private land parcels in 15 of Cambodia's 24 provinces. According to Seng Thany, Deputy Director of LMAP, the project has processed over one million land parcels since its inception in 2002.

**15.** (SBU) Although the stated goal of the LMAP project is to improve land security and create an efficient land market, NGO observers note that the project so far only seeks to document the ownership of undisputed private land, and that the RGC purposefully chose to implement the project in areas with few land disputes (Ref A). Another challenge facing LMAP is its increasing scope. Seng Thany said that the MLUPC originally estimated that LMAP would only need to provide 7-8 million land titles nationwide, with a target completion date of 15-25 years. After recent MLUPC surveys, that estimate has almost doubled to a total of 14-15 million land titles required. LMAP's goal is to have 30% of the private land in the country titled by 2015. (COMMENT: Given that it's taken six years to reach about 8%, meeting that goal looks unlikely. END COMMENT.)

#### REGISTRATION OF STATE LAND

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**16.** (U) LMAP also has a mandate to classify and map all state public and state private land, which it has not yet completed. This task is important for land management and planning, because there is a distinct difference between state public and state private land.

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Per the law, state public land cannot be bought or sold, and it cannot be leased in an economic concession. State private land can be leased under concessions, and individuals who can demonstrate more than five years of legal possession of state private land, beginning before 2001, can claim ownership rights to that land and petition the MLUPC for a title.

**17.** (SBU) Because the locations, sizes, and borders of state land areas are still unclear, land disputes often involve debates about land classification. Government officials at all levels use state land classification to justify development plans and evictions. In one high-profile example, the Phnom Penh Municipal Government granted an economic concession to a company to fill and develop Boeung Kak Lake in central Phnom Penh. Lawyers representing the communities that circle the lake (and face eviction) argued that the concession was illegal, as the land law defines lakes as state public properties. (NOTE: This argument also eroded the residents' possession claims to the area, since they could not petition for ownership of state public land. END NOTE.) In response, the RGC issued a decree converting Boeung Kak from state public to state private land, making the concession legal.

**18.** (U) The RGC and local governments can also grant social land concessions (SLCs) on state private land to provide poor citizens with land tenure and promote productivity on unused state land. The World Bank, viewing SLCs as a tool for poverty alleviation, initiated a Land Allocation for Social and Economic Use program in July 2008. The program works with the MLUPC and commune officials in three provinces to: 1) identify suitable land and beneficiaries for SLCs; and 2) strengthen the MLUPC's capacity for state land management. The project's goals are to transfer land and support livelihood investments for 3,000 families by 2013.

#### SPORADIC PRIVATE LAND TITLING - THE OFFICIAL PROCESS

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**19.** (U) Individuals who wish to have their private land titled before the LMAP process is completed can pay for a one-off, or "sporadic", registration. According to the land law, the process for registering and titling a parcel of land is as follows:

- a. The prospective owner applies for a land title

with their district land management office.

- b. The district land management office issues a land application receipt and sends a field officer to demarcate the applicant's land.
- c. The field officer gathers basic evidence regarding the land's status from property records and testimony from neighbors and commune leaders.
- d. If there are no disputes during the demarcation process, the district land office posts an announcement of demarcation and title in a public area for 30 days for comment.
- e. If there are no objections to the acquisition, the land office forwards the application and all supporting documentation to the provincial and central cadastral administrations.
- f. If the provincial and central cadastral administrations conclude that all documentation is complete and correct, the NCA records the parcel in the Land Register and issues a land title.

#### PRIVATE LAND TITLING - THE REALITY

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**¶10.** (SBU) Despite having a documented, legal process for land titling since 2001, over 90% of Cambodians do not have titles to their properties. NGO analysts, realtors, and attorneys instead describe a system of informal land sales and soft ownership. Approximately 10-20% of Cambodians have possession certificates issued by commune or district officials, but most are reliant on varying degrees of proof of possession, from voter records or land application receipts to neighbors' testimony.

**¶11.** (SBU) Provincial and district land offices lack the technical capacity and manpower to properly follow the land law's guidelines, further hindering the registration process, according to Nhean So Munin, a national land law expert with the EU-funded Land Law Awareness Campaign. District-level land officials have not all been trained or given the equipment to implement the land law's registration guidelines, he explained. Unless a land owner is willing to pay for a qualified surveyor to properly map their land, district land offices fall back on pre-2001 registration procedures.

**¶12.** (U) According to NGO analysts, individuals interested in registering a piece of land typically apply to their district land office for a possession certificate, which is a pre-2001 Land Law document. The district land office then issues an application

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receipt. At this point, the process varies depending on the capacity of the district land office and the financial resources and persistence of the applicant.

**¶13.** (SBU) If the applicant follows through with the possession certificate process, they work with the district land office to informally demarcate the property under consideration. This is usually an estimated survey or sketch of the property. In some districts there may be a notice of the registration and opportunity for public comment, but in many cases this step is skipped. The district land office then gets the applicant's thumbprint and issues a possession certificate. There is no interaction with provincial or national cadastral administrations in the process of issuing a possession certificate.

#### FEES, TAXES ARE DISINCENTIVES TO TITLING

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**¶14.** (SBU) Po Eavkong, a Property Sales Manager with Cambodian firm Bonna Realty Group, told Poloff that the possession certificate process is followed to some extent even in more urban areas. Arranging for a commune chief to sign a possession certificate is cheaper and faster than working through a cadastral office, he said. Processing fees for a soft title range from \$200-\$500, as opposed to hard titles, which carry cadastral fees of \$800-\$1,500 for demarcated property, regardless of size, or \$1,500-\$2,500 for

property that has not yet been demarcated, depending on size. Po Eavkong estimated that about 60% of the properties in Phnom Penh have hard titles.

¶15. (SBU) However, the costs for acquiring even a possession certificate can be beyond what rural Cambodians are able (or in many cases, willing) to pay. In addition to the processing fees, the RGC imposes a 4% of land value tax for transfers and a 2% of land value tax for first-time registrations. If the land is possessed but unused, there is a further 0.5% of land value tax per year (the RGC is trying to encourage development and use of land). Because of these costs, NGO land experts say that most individuals take their initial land application receipt as their proof of possession and fail to complete the steps required for a possession certificate.

¶16. (SBU) NOTE: Given the lack of reliable data on plot sizes and prices, it is difficult to calculate the average tax a Cambodian land owner could incur. Land values in Cambodia can vary greatly, depending on factors such as access to major roads and area development plans. According to Bonna Realty Group, a hectare (about 2.5 acres) of land in remote rural areas can cost as low as \$500, and in rural areas with better access and development plans, a hectare of land can cost up to \$80,000. Based on the Cambodia Development Resource Institute's estimated average rural residential plot size (about 9,827 square feet), rural land owners could owe up to a one-time tax of \$160 for first-time registrations or \$320 for transferring land. The estimated 2008 GDP per capita in Cambodia is \$625 (specific data for rural areas is not yet available), so land registration or transfer taxes could cost anywhere from a quarter to more than half of a rural Cambodian's annual income. END NOTE.

#### LAND TRANSFER

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¶17. (SBU) Land transfers through sale, gift, exchange or succession must be recorded on the Land Register (and the 4% transfer tax must be paid) in order for new owners to be legally recognized. Because the NCA has not yet registered most of the land in Cambodia, district land offices are responsible for tracking land transfers. But because many land owners in Cambodia fail to register their properties in the first place, land can change hands many times without this local legal paper trail.

¶18. (SBU) Even when titles are available, buyers and sellers frequently fail to legally change the names on the titles. For example, in 2007 the NGO Forum on Cambodia and the Cooperation Committee for Cambodia conducted a land titling study following LMAP's completion in Prey Nup District, Sihanoukville Municipality. Out of the 59 LMAP-titled plots that were bought and sold in May-June 2007, the owner of only one plot registered the transfer with the municipal cadastral office. Hep Sokhannaro, a researcher with NGO Forum, said that many people either 1) don't understand that the title is specific to their name, and that a new title must be issued for each new owner of a piece of property; or 2) understand the correct process for transfers but don't want to pay the transfer tax. Seng Thany acknowledged this issue and said that LMAP includes public awareness campaigns to explain the importance and function of land titles.

#### DISPUTE RESOLUTION

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¶19. (SBU) When a dispute arises, there are three avenues for resolution: 1) local or district-level mediation; 2) provincial

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cadastral office or NCA-level adjudication; or 3) adjudication through the courts. However, the same resource and capacity constraints that restrict the land registration process also affect the NCA and its district offices' ability to resolve land disputes. For example, Seng Thany admitted that among the disputes that arise in LMAP, his office is only able to resolve about half of them. NGOs criticize the NCA for being unable to effectively mediate land disputes even in cases where there is a hard title and note that most cases are mediated by commune leaders or adjudicated by the courts.

¶20. (SBU) In 2006, the RGC issued a royal decree establishing a National Authority for Land Dispute Resolution (NALDR) in response to the growing number of land disputes nationwide (Ref B). The NALDR is headed by Deputy Prime Minister Sok An and is comprised of officials from ten different ministries and representatives of the Cambodian Development Council (CDC), Council of Ministers, and the National Assembly. Daniel King, a volunteer lawyer with the Community Legal Education Center (CLEC), explained however that the NALDR has no guidelines by which to mediate land disputes, and the line between its jurisdiction versus the NCA's is unclear.

#### LAND DISPUTE CASES AND THE COURTS

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¶21. (SBU) Hard titles represent the strongest legal evidence of land ownership, but they can sometimes be disputed in court cases. There are no available statistics on the number of cases where land titles could not serve as definitive proof of ownership, but independent court monitors, lawyers, and NGOs consistently describe instances where hard titles are questioned by judges. Land law expert Nhean So Munin noted that judges sometimes cannot treat titles as concrete proof of ownership because of the frequency of unregistered land transfers and the resulting discrepancies in cadastral administration records.

¶22. (SBU) Chou Vineath, a court monitor with the Center for Social Development, said that in some disputes involving one or more wealthy parties, judges have to work closely with the cadastral administration to sort through multiple hard titles to a property, some of which are bought or forged. NGO Forum representatives and lawyers with CLEC agreed and added that the party with the most money typically receives a more favorable judgment, because they can afford to gather and produce more possession evidence. In other cases, one or more of the parties cannot afford private legal counsel, preventing them from effectively defending their land claims.

#### COMMENT

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¶23. (SBU) Despite the gaps in the land titling process, most average Cambodians could currently provide enough evidence to defend their land possession claims if challenged by their peers. But possession claims that are good enough for now will steadily lose their worth as land values climb and wealthy or influential speculators encroach more on rural and/or poor communities, as we already see in many of the current high-profile land disputes. (NOTE: The next report in this series will focus on economic land concessions and urban development. END NOTE.) Until the NCA can operate in its intended capacity as the owner of the National Land Register, and if the trend of undocumented land transfers continues, the number of land disputes and Cambodians at risk of losing their land through non-transparent processes will continue to rise. Land grabbing may be a part of the Cambodian political landscape for some time to come, leading to increased social tension.

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